

CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954 RELATING TO BEER

DECEMBER 15, 1970.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. WATTS, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 6562]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6562) to amend certain provisions of the Internal Revenue Code of 1954 relating to beer, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That (a) section 5056 of the Internal Revenue Code of 1954 (relating to refund and credit of tax, or relief from liability) is amended to read as follows:

"SEC. 5056. REFUND AND CREDIT OF TAX, OR RELIEF FROM LIABILITY.

"(a) BEER RETURNED OR VOLUNTARILY DESTROYED.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary or his delegate may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary or his delegate may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

"(b) BEER LOST BY FIRE, THEFT, CASUALTY, OR ACT OF GOD.—Subject to regulations prescribed by the Secretary or his delegate, the tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary or his delegate may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to

the satisfaction of the Secretary or his delegate that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

"(c) LIMITATIONS.—No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax."

(b) Section 5052(c)(2) of such Code (relating to definition of removed for consumption or sale) is amended to read as follows:

"(2) REMOVALS.—Any removal of beer from the brewery."

SEC. 2. Section 5053 of the Internal Revenue Code of 1954 (relating to exemptions from imposition of tax on beer) is amended by redesignating subsection (d) as (e), and by inserting after subsection (c) the following new subsection:

"(d) REMOVALS FOR RESEARCH, DEVELOPMENT, OR TESTING.—Under such conditions and regulations as the Secretary or his delegate may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations."

SEC. 3. (a) Section 5401(b) of the Internal Revenue Code of 1954 (relating to bonds) is amended by striking out the last sentence and inserting in lieu thereof the following: "Once in every 4 years, or whenever required so to do by the Secretary or his delegate, the brewer shall execute a new bond or a continuation certificate, in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval. If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force between the parties for a succeeding period of not less than 4 years, the brewer may submit, in lieu of a new bond, a certificate executed, under penalties of perjury, by the brewer and the surety attesting to continuation of the bond, which certificate shall constitute a bond subject to all provisions of law applicable to bonds given pursuant to this section."

(b) Section 5402(a) of such Code (relating to definition of brewery) is amended to read as follows:

"(a) BREWERY.—The brewery shall consist of the land and buildings described in the brewer's notice. The continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions; and if parts of the brewery are so separated they must abut on the dividing medium and be adjacent to each other. Notwithstanding the preceding sentence, facilities under the control of the brewer for case packing, loading, or storing which are located within reasonable proximity to the brewery packaging facilities may be approved by the Secretary or his delegate as a part of the brewery if the revenue will not be jeopardized thereby."

(c) Section 5411 of such Code (relating to use of brewery) is amended to read as follows:

"SEC. 5411. USE OF BREWERY.

"The brewery shall be used under regulations prescribed by the Secretary or his delegate only for the purpose of producing, packaging, and storing beer, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts and of soft drinks; for the purpose of processing spent grain, carbon dioxide, and yeast; and for such other purposes as the Secretary or his delegate by regulation may find will not jeopardize the revenue."

(d) Section 5412 of such Code (relating to removal of beer in containers, etc.) is amended by striking out "barrels, kegs, bottles," and inserting "packages,".

(e) Section 5416 of such Code (relating to definitions of bottle and bottling) is amended to read as follows:

"SEC. 5416. DEFINITIONS OF PACKAGE AND PACKAGING.

"For purposes of this subchapter, the term 'package' means a bottle, can, keg, barrel, or other original consumer container, and the term 'packaging' means the filling of any package."

SEC. 4. (a) Part II of subchapter G of chapter 51 of the Internal Revenue Code of 1954 (relating to operations) is amended by adding at the end thereof the following new section:

"SEC. 5417. PILOT BREWING PLANTS.

"Under such regulations as the Secretary or his delegate may prescribe, and on the filing of such bonds and applications as he may require, pilot brewing plants may, at the discretion of the Secretary or his delegate, be established and operated off the brewery premises for research, analytical, experimental, or development purposes with regard to beer or brewery operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter."

(b) The table of sections for part II of subchapter G of chapter 51 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"SEC. 5416. Definitions of package and packaging.

"SEC. 5417. Pilot brewing plants."

SEC. 5. The amendments made by the first four sections of this Act shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act.

I. SUMMARY

This bill, H.R. 6562, makes a series of amendments to the beer tax provisions of the present law, which in general are designed to remove restrictions no longer needed for effective enforcement of the revenue and regulatory aspects of these provisions. They can be summarized as follows:

(1) The bill permits credits or refunds if beer is returned to another brewery of the same brewer and permits offsets (instead of merely a credit or refund) if the beer is returned to the brewery from which it was removed (even though the beer is not returned on same day it was removed).

(2) The bill permits credits or refunds in the case of loss by theft (without the collusion of the brewer's employees or those with whom he deals) and also where the beer is rendered unmerchantable (even though it is not actually destroyed).

(3) The bill permits tax-free removals of beer from a brewery for research and development.

(4) The bill permits the bonding requirements to be met by certifying the continuation of an existing bond, in place of the present requirement that a new bond be secured.

(5) The bill codifies present regulations defining the area of a brewery and permitting certain facilities to be near the main facilities, rather than requiring them to adjoin the main facilities.

(6) The bill eliminates the requirement of separate facilities for the bottling of beer and cereal beverages.

(7) The bill codifies present regulations permitting the establishment of experimental breweries.

This bill is reported unanimously by your committee and the Treasury Department has indicated that it has no objection to the bill's enactment.

II. REASONS FOR THE BILL

Each of the changes in present law made by the bill is designed to relax Internal Revenue Code regulatory provisions dealing with beer,

but only under such regulatory authority and other restrictions as are designed to assure efficient supervision of operations and collection of tax by the Internal Revenue Service. The relaxation of these requirements should facilitate the brewing of beer without giving rise to any difficulties as to the collection of taxes.

III. GENERAL EXPLANATION

A. Beer returned to the brewery (the first sec. of the bill and secs. 5056(a) and 5052(c) of the code)

Present law requires that beer be returned to the same brewery from which it was removed in order for the brewer to obtain the taxes he had previously paid upon removal from the brewery.¹ If the beer is returned the same day, then the brewer may offset the tax on the returned beer against the tax on the amount of beer removed on that day; if the beer is returned on another day, then the brewer must file a claim for credit or refund.

The bill makes two changes regarding the return of beer to a brewery: (1) it permits claims for credit or refund of tax where beer is returned to any brewery of the brewer who originally paid the tax (whether or not the brewery from which it was withdrawn) and (2) where beer is returned to the brewery from which it was withdrawn the bill for purposes of computing the tax permits the amount so returned to be allowed as an offset or deduction against the amount of beer removed from the brewery on the day of the return. (The offset procedure is simpler and more convenient than the claim-for-refund procedure, for both the Internal Revenue Service and the taxpayers.)

Both changes are intended to avoid unreasonable interference with brewers' efforts to institute more modern and efficient distribution methods. In the case of both of these changes, the new procedures are to be allowed only in accordance with regulations prescribed by the Treasury Department.

In addition, the bill would strike out the requirement that the beer be "removed from the market," since that phrase no longer appears to have any substantive effect.

B. Thefts, etc. (the first sec. of the bill and sec. 5056(b) of the code)

Under present law, no credit or refund of the beer tax is permitted in the case of losses by theft. Credit or refund of tax is permitted in the case of other losses, or of destruction of the beer by fire, casualty, or act of God, where the loss or destruction occurs before transfer of title to any other person.

The bill allows a credit or refund of tax where the beer is rendered unmerchantable by fire, casualty, or act of God, even though the beer is not actually destroyed. Both the fact that the beer has been rendered unmerchantable and the cause (fire, casualty, or act of God) must be appropriately verified. The credit or refund is not to be available unless it is found that the beer cannot be salvaged and returned to the market for consumption or sale as beer.

The bill also allows a credit or refund in the case of a loss by theft

¹ The same provision also permits credit or refund of the beer tax if the beer is destroyed under the supervision required by Treasury regulations. This aspect of the provision is not changed by this bill.

where the theft occurs without the involvement of any of the following: the brewer, persons the brewer deals with in regard to that beer, or employees or agents of any of these persons; also, the theft must have occurred before the beer was removed from the brewery.² These provisions are to apply only if the brewer establishes to the satisfaction of the Treasury that the theft occurred in accordance with the standards set forth in the bill. The theft provisions added by this bill are essentially similar to those provided under existing law (pars. (1)(A) and (2) of sec. 5008(a)) in the case of distilled spirits.

The bill also makes it clear that the taxpayer may be required to file formal claims for relief from the tax and to submit proof as to the cause of the loss of the beer.

C. Research and development (sec. 2 of the bill and sec. 5053(d) of the code)

Under present law, beer may be removed from a brewery without payment of tax only in the following circumstances: (1) for export, (2) when the beer is unfit for use as a beverage, (3) for laboratory analysis, or (4) as supplies for certain vessels and aircraft.

The bill would permit beer to be removed from the brewery without payment of tax for use in research, development, or testing of processes, systems, materials, or equipment relating to beer or brewery operations. However, removals for testing purposes may not be made for consumer testing or other market analysis. A removal under this provision may be made only under such conditions and regulations as are prescribed by the Treasury. These restrictions (regarding consumer testing and conditions in regulations) are intended to be sufficient to protect the basic integrity of the beer tax without unreasonably interfering with proper research and development procedures.

D. Brewers' bonds (sec. 3(a) of the bill and sec. 3401(d) of the code)

Under present law, a brewer is required to file a new bond for tax liability every four years.

The bill permits the bonding requirement to be satisfied by continuation of an existing bond, with such continuation being subject to Government approval in the same manner as is true in the case of a new bond. The continuation certificate must be executed by both the brewer and the surety, under penalties of perjury, and is to have the same effect as a bond given under these provisions of the law.

E. Proximity of facilities (sec. 3(b) of the bill and sec. 5402(a) of the code)

Present law provides that a brewery consists of the land or buildings described in the brewer's notice. Present regulations (sec. 245.11) prescribe that certain requirements must be met as to continuity or proximity of facilities. They also allow reasonably proximate loading facilities under control of the brewer to be approved as part of the brewery if this does not jeopardize the revenue.

The bill, essentially, merely codifies the regulations described above except that it also permits packing and storing facilities to be approved as part of the brewery under the same circumstances that apply under the present regulations in the case of the loading facilities.

² See discussion in part E, below, relating to authority to permit certain portions of a brewery not to be contiguous to the main portions of the brewery. Beer moved between these noncontiguous portions of the brewery are not treated as having been "removed" from the brewery.

F. Bottling facilities (secs. 3(c), 3(d), and 3(e) of the bill and secs. 5411, 5412, and 5416 of the code)

Under present law, bottling of beer and cereal beverages (but not filling of casks or barrels) must be done in a portion of the brewery which is separate from other portions of the brewery and which is specifically designated for that purpose.

The bill eliminates the requirement of separate facilities for the bottling of beer and cereal beverages and makes other minor definitional changes to simplify the present statutory provisions without changing the substance of the provisions. The bill also eliminates definitions of "bottle" and "bottling" and inserts in their place definitions of "package" and "packaging". The old definitions are no longer needed, because of the elimination of the provision regarding separate bottling facilities; the new definitions permit simplification of the statute.

G. Pilot brewing facilities (sec. 4 of the bill and sec. 5417 of the code)

Current regulations (secs. 245.251 through 245.257) provide for the establishment of experimental breweries. The statute does not deal directly with this matter.

The bill permits the establishment, at the discretion of the Internal Revenue Service, of pilot brewing plants off the brewery premises for research, analytical, experimental, or developmental purposes with regard to beer or brewery operations. This however, provides no authority to waive the filing of any bond or the payment of any distilled spirits, wine, or beer tax (provided for under chapter 51 of the code).

H. Effective date (sec. 5 of the bill)

The changes made by this bill are to take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this bill.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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SEC. 5052. DEFINITIONS.

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(c) REMOVED FOR CONSUMPTION OR SALE.—Except as provided for in the case of removal of beer without payment of tax, the term "removed for consumption or sale", for the purposes of this subpart, means—

(1) SALE OF BEER.—The sale and transfer of possession of beer for consumption at the brewery; or

(2) REMOVALS.—Any removal of beer from the brewery [except that such removal shall not include any beer returned to the brewery on the same day such beer is removed from the brewery].

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SEC. 5053. EXEMPTIONS.

(a) REMOVALS FOR EXPORT.—Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary or his delegate may by regulations prescribe.

(b) REMOVALS WHEN UNFIT FOR BEVERAGE USE.—When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary or his delegate may prescribe.

(c) REMOVALS FOR LABORATORY ANALYSIS.—Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary or his delegate may prescribe.

(d) REMOVALS FOR RESEARCH, DEVELOPMENT, OR TESTING.—*Under such conditions and regulations as the Secretary or his delegate may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.*

[(d)] (e) REMOVAL AS SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT.—

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

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SEC. 5056. REFUND AND CREDIT OF TAX, OR RELIEF FROM LIABILITY.

[(a) BEER REMOVED FROM MARKET.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary or his delegate may prescribe, if such beer is removed from the market and is returned to the brewery or is destroyed under the supervision required by such regulations.

[(b) BEER LOST BY FIRE, CASUALTY, OR ACT OF GOD.—Subject to regulations prescribed by the Secretary or his delegate, the tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost other than by theft, or is destroyed by fire, casualty, or act of God, before the transfer of title thereto to any other person.

[(c) DATE OF FILING.—No claims under this section shall be allowed unless filed within 6 months after the date of such removal from the

market, loss, or destruction, or if the claimant was indemnified by insurance or otherwise in respect of the tax.】

(a) *BEER RETURNED OR VOLUNTARILY DESTROYED.*—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary or his delegate may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary or his delegate may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

(b) *BEER LOST BY FIRE, THEFT, CASUALTY, OR ACT OF GOD.*—Subject to regulations prescribed by the Secretary or his delegate, the tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary or his delegate may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to the satisfaction of the Secretary or his delegate that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(c) *LIMITATIONS.*—No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax.

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SEC. 5401. QUALIFYING DOCUMENTS.

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(b) *BONDS.*—Every brewer, on filing notice as provided by subsection (a) of his intention to commence business, shall execute a bond to the United States in such reasonable penal sum as the Secretary or his delegate shall by regulation prescribe as necessary to protect and insure collection of the revenue. The bond shall be conditioned (1) that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, including all beer removed for transfer to the brewery from other breweries owned by him as provided in section 5414; (2) that he shall pay or cause to be paid the tax on all beer removed free of tax for export as provided in section 5053(a), which beer is not exported or returned to the brewery; and (3) that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the production and sale of any beer aforesaid. Once in every 4 years, or whenever required so to do by the Secretary or his delegate, the brewer shall execute a new bond or a continuation certificate, in the penal sum prescribed in pursuance

of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval. *If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force between the parties for a succeeding period of not less than 4 years, the brewer may submit, in lieu of a new bond, a certificate executed, under penalties of perjury, by the brewer and the surety attesting to continuation of the bond, which certificate shall constitute a bond subject to all provisions of law applicable to bonds given pursuant to this section.*

SEC. 5402. DEFINITIONS.

(a) BREWERY.—The brewery shall consist of the land and buildings described in the brewer's notice. *The continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions; and if parts of the brewery are so separated they must abut on the dividing medium and be adjacent to each other. Notwithstanding the preceding sentence, facilities under the control of the brewer for case packing, loading, or storing which are located within reasonable proximity to the brewery packaging facilities may be approved by the Secretary or his delegate as a part of the brewery if the revenue will not be jeopardized thereby.*

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Subchapter G—Breweries

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PART II—OPERATIONS

Sec. 5411. Use of brewery.

Sec. 5412. Removal of beer in containers or by pipeline.

Sec. 5413. Brewers procuring beer from other brewers.

Sec. 5414. Removals from one brewery to another belonging to the same brewer.

Sec. 5415. Records and returns.

[Sec. 5416. Definitions of bottle and bottling.**]**

Sec. 5416. Definitions of package and packaging.

Sec. 5417. Pilot brewing plants.

SEC. 5411. USE OF BREWERY.

The brewery shall be used under regulations prescribed by the Secretary or his delegate only for the purpose of **[**producing beer, cereal beverages containing less than one-half of one percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other by-products; of bottling beer and cereal beverages; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of producing and bottling soft drinks; and for such other purposes as the Secretary or his delegate by regulation may find will not jeopardize the revenue. The bottling of beer and cereal beverages shall be conducted only in the brewery bottle house which shall consist of a separate portion of the brewery designated for that purpose**]** *producing, packaging, and storing beer, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts and of soft drinks; for the purpose of processing spent grain, carbon dioxide, and yeast; and for such other purposes as the Secretary or his delegate by regulation may find will not jeopardize the revenue.*

SEC. 5412. REMOVAL OF BEER IN CONTAINERS OR BY PIPELINE.

Beer may be removed from the brewery for consumption or sale only in hogsheads, [barrels, kegs, bottles,] *packages*, and similar containers, marked, branded, or labeled in such manner as the Secretary or his delegate may by regulation require, except that beer may be removed from the brewery by pipeline to contiguous distilled spirits plants under section 5222.

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SEC. 5416. DEFINITIONS OF BOTTLE AND BOTTLING.

■ [For purposes of this subchapter, the word "bottle" means a bottle, can, or similar container, and the word "bottling" means the filling of bottles, cans, and similar containers.]

SEC. 5416. DEFINITIONS OF PACKAGE AND PACKAGING.

For purposes of this subchapter, the term "package" means a bottle, can, keg, barrel, or other original consumer container, and the term "packaging" means the filling of any package.

SEC. 5417. PILOT BREWING PLANTS.

Under such regulations as the Secretary or his delegate may prescribe, and on the filing of such bonds and applications as he may require, pilot brewing plants may, at the discretion of the Secretary or his delegate, be established and operated off the brewery premises for research, analytical, experimental, or development purposes with regard to beer or brewery operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter.





